

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MIKE EINSTEIN,

Plaintiff,

v.

RADIO THERMOSTAT COMPANY OF
AMERICA INC., et al.,

Defendants.

Case No. [21-cv-00300-CRB](#)

**ORDER GRANTING MOTION TO
DISMISS CLAIMS 4 AND 5**

Plaintiff Mike Einstein is suing his former employer Defendants Radio Thermostat Company of America, Inc., Tim Simon, Inc., and Tim Simon, alleging eight claims. In Claim 4, Einstein alleges that Defendants “knowingly misclassif[ied] [its workers] as independent contractors, in violation of California Labor Code Section 226.8.” Compl. (dkt. 1) ¶ 41. In Claim 5, he seeks civil penalties, alleging that Defendants failed to furnish accurate paystubs, in violation of Labor Code § 226(a). *Id.* ¶¶ 44, 46–47.

Simon moved to dismiss these two claims. Mot. to Dismiss (dkt. 29); *see* Fed. R. Civ. P. 12(b)(6). Einstein does not oppose. Statement of Non-Opposition (dkt. 36).

The Court agrees that both claims lack “a cognizable legal theory.” *Godecke v. Kinetic Concepts, Inc.*, 937 F.3d 1201, 1208 (9th Cir. 2019). Claim 4 fails because Labor Code § 226.8 does not create a private right of action. *Noe v. Superior Court*, 237 Cal. App. 4th 316, 334 (2015). Claim 5 fails because Einstein’s employment ended in 2019, so the one-year statute of limitations forecloses the recovery of civil penalties. *See* Compl. ¶ 23; Cal. Civ. Proc. Code § 340. Amendment of either claim would be futile. *See Leadsinger, Inc. v. BMG Music Pub.*, 512 F.3d 522, 532 (9th Cir. 2008).

For the foregoing reasons, the Court dismisses Claims 4 and 5 with prejudice.

IT IS SO ORDERED.

Dated: October 27, 2021



CHARLES R. BREYER
United States District Judge